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WALKER *v.* GATEWAY MILLING CO

June 14, 1917.

[92 S. E. 826.]

1. Evidence (§ 457*)—Parol Evidence—Trade Customs.—In action for breach of a contract to buy winter wheat bran, it was not error to admit evidence of custom showing that such bran contained screenings, since such evidence did not vary or contradict the contract, but interpreted certain terms thereof which had an established trade meaning.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2104, 2107, 2108.* 10 Va.-W. Va. Enc. Dig. 712.]

2. Food (§§ 5, 15*)—Custom—Trade Terms.—In an action for breach of contract to pay for "winter wheat bran" sold, there being a custom under which such bran was allowed to contain screenings, there was no contravention of state and federal statutes against the adulteration and misbranding of commercial feeding stuffs; the parties having employed trade terms having a definite meaning.

[Ed. Note.—For other cases, see Food, Cent. Dig. §§ 1, 14.* 1 Va.-W. Va. Enc. Dig. 183.]

3. Appeal and Error (§ 1001 (1)*)—Review—Conclusiveness of Fact.—In an action for breach of contract to pay for winter wheat bran, a verdict that a custom under which such bran was allowed to contain screenings existed, being supported by evidence, was conclusive on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3928-3933.* 1 Va.-W. Va. Enc. Dig. 620, 621.]

4. Contracts (§ 169*)—Construction—Circumstance.—The circumstances under which a contract was entered into, including negotiations leading up to it, are to be considered in determining its meaning.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 752.* 3 Va.-W. Va. Enc. Dig. 395.]

5. Sales (§ 333*)—Resale—Notice.—Where goods are rejected by the buyer as not being up to sample, and they are resold by the seller, the buyer is not entitled to notice of the time and place of sale.

[Ed. Note.—For other cases, see Sales, Cent. Dig. § 919.* 12 Va.-W. Va. Enc. Dig. 40, 41.]

Error to Corporation Court of Newport News.

Action by the Gateway Milling Company against H. B.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Walker. Judgment for plaintiff, and defendant brings error. Affirmed.

J. W. Read and *Lett & Massie*, all of Newport News, for plaintiff in error.

Nelms, Colonna & McMurren and *A. D. Jones*, all of Newport News, for defendant in error.

MADDUX et al. v. BUCHANAN et al.

June 14, 1917.

[92 S. E. 830.]

1. Appeal and Error (§ 931 (10*))—Presumptions—Commissioner's Report.—A commissioner's report upon a question of fact confirmed by the trial court is presumably correct.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3728.* 1 Va.-W. Va. Enc. Dig. 623; 15 Va.-W. Va. Enc. Dig. 74.]

2. Mechanics' Liens (§ 113 (2*))—Subcontractors—Owner's Liability.—Under the provisions of the Mechanic's Lien Law (Code 1904, §§ 2477, 2479) that an owner is not liable to subcontractors in excess of sum he owed the general contractor at or after receiving notice of the subcontractor's intention to claim a lien, a subcontractor can enforce no greater liability than that.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 148.* 9 Va.-W. Va. Enc. Dig. 765-772.]

3. Mechanics' Liens (§ 100*)—Subcontractors—Notice of Contract.—A subcontractor, desiring to collect his claim from the owner by mechanic's lien proceedings or because owner is individually liable, is charged with notice of the owner's unrecorded contract with the general contractor; the recording of such contracts not being required.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 133.* 9 Va.-W. Va. Enc. Dig. 772.]

4. Mechanics' Liens (§ 113 (1*))—Necessity of Decision.—In mechanic's lien proceedings by a subcontractor, it is unnecessary to decide whether the general contractor's account against the owner was correctly charged with certain items, where such contractor would still owe the owner if contested items were eliminated.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 148.* 9 Va.-W. Va. Enc. Dig. 772.]

5. Appeal and Error (§ 926 (8*))—Presumptions—Excluding Deposition.—Where the record is not clear and counsel are not agreed

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.